

THE HON. RICHARD JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)

Plaintiff,
v.
DNT JEFFREY REYNOLDS,
Defendant. } MOTION FOR RECONSIDERATION
} Note on Motion Calendar:
} June 22, 2020

COMES NOW Lamont Reynolds, the defendant, by and through his attorney, Neil M. Fox, and asks for reconsideration of the Order on Defendant's Motion for Compassionate Release, Dkt. 1327, issued on June 17, 2020.

1. *Introduction*

Imprisoned at FCI Lompoc, an epicenter of the COVID-19 pandemic, Mr. Reynolds sought compassionate release under 18 U.S.C. § 3582(c)(1)(A). In its June 17th ruling, the Court denied the motion in part based on the conclusion that Mr. Reynolds has received “extensive care, treatment, and testing of Mr. Reynolds’ medical conditions” and that his “confirmed case of COVID-19 was resolved.” Dkt. 1327 at 6. The Court further noted, “His last medical report indicates that he is currently receiving medication for his other health concerns and is not suffering from any reported lingering symptoms from COVID-19.” *Id.* at

1 7. The Court also stated: “Mr. Reynolds filed a Supplemental Memorandum and incorrectly
 2 represented that the Bureau of Prisons stopped providing medical care after May 21, 2020,
 3 and ignored a request to provide medical treatment for his chronic and acute medical
 4 problems.” *Id.* at 3.

5 In fact, Mr. Reynolds has not received appropriate medical care; he suffers the
 6 lingering effects of COVID-19; BOP stopped regular medical care after May 21st and likely
 7 only examined him on June 9th because of this Court’s order; and Mr. Reynolds is still at risk.

8 **2. Standard for Reconsideration**

9 Pursuant to Local CrR 12(b)(13)(A), the Court will ordinarily deny a motion for
 10 reconsideration “in the absence of a showing of manifest error in the prior ruling or a showing
 11 of new facts or legal authority which could not have been brought to its attention earlier with
 12 reasonable diligence.” The motion must “point out with specificity the matters which the
 13 movant believes were overlooked or misapprehended by the court, any new matters being
 14 brought to the court’s attention for the first time, and the particular modifications being sought
 15 in the court’s prior ruling.” Local CrR 12(b)(13)(B).

16 **3. Manifest error and Misapprehended Matters**

17 The Court’s ruling is predicated on the conclusion that Mr. Reynolds “recovered” from
 18 COVID-19, that BOP is treating his underlying chronic conditions, and that Mr. Reynolds
 19 incorrectly argued that BOP had stopped providing him with medical care on May 21, 2020.
 20 However, a review of the record confirms Mr. Reynolds’ position.

21 On June 2, 2020, the Court ordered the Government to “provide to this Court by June
 22 11, 2020, a report on Mr. Reynolds’s current medical condition, any COVID-19 symptoms he
 23 is currently suffering, any treatment that he has sought, and the treatment provided.” Dkt.
 24 1316 at 3. On June 4, 2020, the Government provided the undersigned counsel with ten pages
 25 of Mr. Reynolds’ medical records (filed under seal as Exhibit 1), records that supplemented
 26 those provided by the Government in early May (Dkt. 1297, Ex. A). The records provided on
 27 June 4th stopped at May 21, 2020, when Mr. Reynolds’ temperature was taken (apparently by
 28 a dentist) and Reynolds complained about his symptoms: “Inmate screened for COVID-19
 symptoms. Inmate denies cough, SOB, sore throat, HA, loss of taste and smell, and/or chills.

1 Patient complains of muscle pain.” Ex. 1 at 2 (emphasis added). A few days before, on May
 2 15, 2020, Mr. Reynolds had complained about shortness of breath: “New Reported
 3 Symptoms: *Short of Breath.*” Ex. 1 at 2 (emphasis added).

4 As noted, the records provided to counsel on June 4th stopped at May 21, 2020.¹ In
 5 other words, despite Mr. Reynolds’ continued illness, BOP did not provide any follow up
 6 medical care. Moreover, despite the fact that counsel informed BOP’s lawyer, Mr. Dennis
 7 Wong, on May 14, 2020, that an independent review of the prior BOP records by Dr.
 8 Alexander Schafir revealed that Mr. Reynolds had several chronic health conditions that were
 9 not being treated (a prior heart attack, kidney and liver disease, excessive post-incarceration
 10 weight gain, possible sleep apnea), Dkt. 1317 Ex. 1,² nothing in the records provided on June
 11 4th revealed that BOP had done anything to address those problems. Indeed, the records
 12 provided on June 4th were notable in they did not even contain mention of Dr. Schafir’s
 13 findings about Reynolds’ health conditions.

14 On June 9, 2020, the undersigned counsel was able to have a brief legal call with Mr.
 15 Reynolds. Counsel learned that likely as a result of this Court’s order of June 2nd, BOP
 16 medical staff had examined Mr. Reynolds that morning, an examination that counsel
 17 specifically referenced in his later supplemental pleading filed very late on June 10, 2020.
 18 Dkt. 1317 at 2. Attached to the supplemental memo, Mr. Reynolds provided the Court with
 19 declarations from three doctors: (1) a supplemental declaration from Dr. Schafir noting the
 20 type of treatment that he would provide to Mr. Reynolds if he was his patient, which would
 21 include taking new blood samples to check on Reynolds’ liver and kidney disease and
 22 cholesterol levels, ordering an ultrasound and conducting a sleep apnea test. Dr. Schafir also

23
 24 ¹ There is an entry on May 30, 2020, that someone made claiming that the confirmed case
 25 of COVID-19 had “resolved,” but this was not made after provision of any treatment or examination of
 26 Mr. Reynolds. Ex. 1 at 5.

27 ² Counsel had provided Mr. Wong with Reynolds’ reply memo which attached the
 28 Declaration of Dr. Alexander Schafir, Dkt. 1301 at 18-21 (Ex. 1), who for the first time was able to
 review BOP’s medical records and who identified multiple chronic health concerns, gleaned from the
 BOP medical records but which were not being properly treated by BOP (i.e. liver and kidney disease,
 history of heart attack, morbid obesity, possible sleep apnea).

1 revised his prior opinion about morbid obesity and risk levels (Dkt. 1317, Ex. 3); (2) a
 2 supplemental declaration from Dr. Shamsher Samra of UCLA that discussed how Mr.
 3 Reynolds' conditions (liver and kidney disease, coronary disease, obesity, possible sleep
 4 apnea) were risk factors for someone who was suffering COVID-19. Dr. Samra also
 5 discussed the possible risk of reinfection for COVID-19 (Dkt. 1317, Ex. 4); and (3) a
 6 declaration from Dr. Joshua Schiffer from the Fred Hutchinson Center about the unknown
 7 long-term effects of COVID-19. Dkt. 1317, Ex. 5.

8 Because when counsel filed his supplemental memo late on June 10th, counsel had not
 9 yet seen any medical records from the June 9th exam, and because BOP's counsel, Mr. Wong
 10 had refused to provide him with updates about Mr. Reynolds' medical conditions, Dkt. 1317,
 11 Ex. 1, counsel noted that any new information from the June 9th contact should be evaluated
 12 by outside medical experts. Dkt. 1317 at 4. Counsel further asked that the Court order BOP
 13 to take Mr. Reynolds off-site "to an outside medical facility where he can properly be given
 14 standard medical tests to be able to determine his true medical condition." *Id.*

15 After Mr. Reynolds filed his supplemental materials, the Government filed its pleading
 16 late in the day of June 11, 2020, with a letter from a doctor who has never examined Mr.
 17 Reynolds (Dr. Pelton) who confirmed that Mr. Reynolds had Stage 2 kidney disease, but
 18 appeared to shift the blame to Mr. Reynolds for "poor compliance" with his hypertension
 19 medication, ignoring Reynolds' complaints about the dizziness the medication caused. Dkt.
 20 1319, Ex. 1. The Government also filed new medical records that contain the notes from the
 21 June 9th medical contact and the results of an EKG. Dkt. 1319, Amended Ex. 2.

22 At the outset, the new records (which had not previously been disclosed to counsel)
 23 confirmed what counsel reported in his supplemental memo – that BOP's medical staff finally
 24 had contact with Mr. Reynolds on June 9th. Even these records showed that Mr. Reynolds
 25 complained about continuing pain: "*COVID+ inmate with related body aches x weeks;*
explained duration of residual COVID symptoms. Inmate understands. Will Rx Tylenol."

26 Dkt. 1319, Amended Ex. 2 at 23 (emphasis added). This evidence is contrary to the Court's
 27 conclusion Mr. Reynolds "is not suffering from any reported lingering symptoms from
 28 COVID-19." Dkt. 1327 at 7.

1 More importantly, the records that the Government provided late on June 11th reveal
 2 that BOP is not treating or otherwise monitoring Mr. Reynolds' liver and kidney disease,
 3 morbid obesity, possible sleep apnea and heart disease (other than taking an EKG). There
 4 were no additional blood tests taken; no scans ordered; no sleep studies ordered. An EKG was
 5 administered and nothing more. The last blood work done on Mr. Reynolds remains that
 6 which was done in October 2019. Dkt. 1297, Ex. A at 99-100. In other words, despite Mr.
 7 Reynolds' medical condition and despite the fact that he became sick with COVID-19 in a
 8 very unhealthy environment, characterized by poor sanitation and widespread illness, BOP has
 9 provided him with substandard medical care – not doing the types of things that Dr. Schafir
 10 would normally do if Reynolds was his patient in a clinic in the community.

11 Again, despite the fact that Mr. Reynolds' provided Dr. Schafir's report to BOP's
 12 counsel in May, there is no indication that BOP acted that information. Despite the fact that
 13 Mr. Reynolds' complained about his symptoms on May 21, 2020, BOP stopped regular
 14 medical attention and apparently only saw Mr. Reynolds on June 9th because of this Court's
 15 order of June 2nd, but still has done nothing to address Mr. Reynolds' chronic medical
 16 problems. Finally, BOP is not monitoring Mr. Reynolds' current situation in light of the
 17 documented risks to his health caused by having underlying chronic medical conditions in
 18 conjunction with a positive diagnosis for COVID-19 as explained by Dr. Samra.

19 This Court's order denying compassionate release contains manifest error and
 20 misapprehends Mr. Reynolds' medical situation and BOP's failure to provide him with
 21 adequate medical care. The Court should change its order of June 17, make it clear that BOP
 22 stopped providing Mr. Reynolds regular medical care after May 21st and that its exam of Mr.
 23 Reynolds on June 9th (likely a result of the June 2nd order) failed to address Mr. Reynolds'
 24 chronic conditions. The Court should then grant the motion for compassionate release.

25 DATED this 22nd day of June 2020.

26 Respectfully submitted,
 27 s/ Neil M. Fox
 28 Attorney for Defendant

1 CERTIFICATE OF SERVICE
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I hereby certify that on the 22nd day of June 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to attorney of record for the Plaintiff and all other parties.

4 s/ Neil M. Fox _____
5 Attorney for Defendant
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